

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Field Citation Issued
to Checkered Flag, Inc.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, at 1:00 p.m. on Monday, May 12, 2003, in Baxter, Minnesota.

Appearing on behalf of the Minnesota Pollution Control Agency was Assistant Attorney General Beverly M. Conerton, 445 Minnesota Street, Suite 900, St. Paul, MN 55101-2127.

There was no appearance by, or on behalf of, Checkered Flag, Inc.

The record closed at the conclusion of the hearing on May 12, 2003.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Pollution Control Agency will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation. Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of this report. Checkered Flag, Inc. may, within those five days, comment to the Commissioner on the recommendation and the Commissioner will consider the comments.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final decision pursuant to Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report or the

presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

The issues in this proceeding are whether the violations alleged in the Civil Citation^[1] issued to Checkered Flag, Inc. on March 25, 2003, occurred, and, whether the penalties assessed by the Civil Citation should be affirmed.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 16, 2003, Sheryl Corrigan, Commissioner of the Pollution Control Agency, issued a Notice of and Order for Hearing, setting the hearing in this matter for May 12, 2003, at 1:00 p.m. at the MPCA's office in Baxter, Minnesota.^[2] On April 18, 2003, the Notice and Order was served upon Mr. Michael Rodahl, of Checkered Flag, Inc., by certified mail, return receipt requested.^[3] The return receipt was signed and returned to the Pollution Control Agency.^[4]

2. The Notice of and Order for Hearing contain the following language:

Failure to appear at the hearing will result in the violations listed in the Field Citation being taken as true, and the Field Citation will be enforced as currently issued. ... If persons have good reason for requesting a change in the date, time or place of the hearing, the date and time of this hearing can be changed. The request must be made in accordance with Minn. R. 1400.8602. All parties must be notified of a request to change the time, date or place of the hearing.

3. Neither the Administrative Law Judge, the Assistant Attorney General, or the agency received any request from Mr. Rodahl or any other person representing Checkered Flag, Inc. for a change in the date, time or place of the hearing.

4. Neither Mr. Rodahl nor any other person representing Checkered Flag, Inc. appeared at the hearing on May 12. At approximately 1:10 p.m., an agency staff person attempted to reach Mr. Rodahl at his office and on his cell phone. Mr. Rodahl was not at his office, and did not answer his cell phone. Messages were left at his office and on his cell phone, requesting that he contact the agency office in Baxter. At 1:35 p.m., the agency office had not received any communication from Mr. Rodahl or any other person representing Checkered Flag, Inc., and the Administrative Law Judge declared a default.

5. Because Checkered Flag, Inc. failed to appear at the hearing, it is in default. Pursuant to Minn. R. pt. 1400.8560, the allegations in the Notice of Hearing are hereby taken as true, and deemed proved without further evidence. The violations listed in the Civil Citation^[5] are therefore taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § § 14.50, 116.072, and 116.073 (2002).

2. The Commissioner has given proper notice of the hearing in this matter, and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. As a result of the default, the conduct complained of in the Civil Citation is deemed to have occurred as alleged, and Checkered Flag, Inc. is deemed to have violated Minn. R. pt. 7150.0310.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner affirm the Civil Citation issued to Checkered Flag, Inc. and proceed to enforce it.

Dated this 15th day of May 2003.

S/ Allan W. Klein

ALLAN W. KLEIN

Administrative Law Judge

Reported: Default

NOTICE

If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.62, subd. 2a, this report shall constitute the final decision in the matter.

^[1] The terms "Field Citation" and "Civil Citation" are interchangeable for purposes of this Report. Both refer to Ex. 4, dated March 25, 2003.

^[2] Ex. 1.

^[3] See letter dated April 18, 2003 from Beverly M. Conerton accompanying Ex. 1.

^[4] Ex. 2.

^[5] Ex. 4.